

Bert may have a cause for action in the tort of negligence against Groovy Clothing Stores (GCS). To prove that Groovy Clothing Stores was negligent in this case, Bert must establish that:

- 1) GCS owed him a duty of care
- 2) GCS breached the applicable standard of that duty; and
- 3) GCS's breach of such duty of care resulted in Bert's suffering loss or damage.

Lord Atkin's 'neighbour' test suggested that person A owes a duty of care if B is sufficiently proximate to A. In other words, the test will hold if A's actions or omissions may affect B in a reasonably foreseeable manner and consequently cause damage or suffering or damage to B. In this case, GCS owes Bert a duty of care because Bert was in their premises and such duty of care is non delegable (and hence could not be discharged) to GCS's contractor who was hired to renovate the premises. According to the 'neighbour' test, occupiers of land owe a duty of care to their entrants (neighbours) in respect of premises because of their control over the premise. *Australian Safeway Stores v Zaluzna*. Since Bert's presence in the store was organised and controlled by the store, and it is reasonably foreseeable that GCS's actions and omissions could cause damage to Bert and other shoppers, it is hence sufficient for GCS to owe Bert a duty of care.

The standard of care owed by GCS is that of an ordinary, reasonable and prudent occupier who takes reasonable care to avoid foreseeable risks of harm to entrants (not just shoppers) of the premises. *Bolton v Stone, Mercer's Case*. In this case, no information was given as to the standards usually required of storeowners or whether GCS has complied with the retail industry's general standards of practice. However it is reasonably foreseeable that harm could occur: allowing too many people to climb the stairs at the same time could very likely cause serious injuries, especially when people started pushing against each other. In addition, GCS should have foreseen (as it had intended to do) that an opening sale would attract a huge crowd to the store. However we have no information to support whether or not the stairs would collapse when too many people were stepping on it. Clearly such an accident could have been avoided if GCS had simply made an announcement using the public address system or by putting up signs reminding shoppers not to rush up the stairs. Also GCS could have hired extra staff to control the customer flow at the stairs. Given the likelihood of serious harm to the stair users, it would have been reasonable for ordinary and prudent storeowners to perform the above precautions. GCS omitted these precautions, failed to warn Bert and other shoppers and as a result caused Bert extensive injuries. It appears that GCS has breached its duty of care to Bert.

Although a shopper entering a shop like GCS would not assume voluntarily (*volenti non fit injuria*) the risk of falling down a collapsed staircase, in defence of its breaching duty of care, GCS could probably claim that Bert was partly liable for his injury due to his failure to take reasonable care of himself (contributory negligence) on the grounds that an ordinary, reasonable and prudent person would not force him or herself up the stairs at the same time along with so many other people because of the foreseeability of an accident (*Cook v Cook*). If this were the case, then not all the losses and damages Bert suffered would be recoverable.

If GCS failed to prove that it was partly Bert's negligence that caused himself such injuries, it would then be completely liable to Bert for any foreseeable loss or damage (*Wagon Mound Cases*) which he suffered as a result of the breach. But for the breach, Bert would not have suffered extensive injuries and be hospitalised for six months. (*Cork v Kirby McLean; Chapel v Hart*). Hence the medical expenses for Bert's hospitalisation and any foreseeable and reasonable physical or other economic damages (e.g. loss of earning capacity) though not mentioned in the case, would be recoverable by GCS.

It appears that Bert would be successful if he sued GCS for negligence. However, if Bert was held partly liable for his injury due to contributory negligence, he might be able to recover only part of these damages.